IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 408 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHEDA JILLA PANCHAYAT

Versus

JAY STATIONERS

Appearance:

MR HAROOBHAI MEHTA for Petitioner

MR DEEPAK V PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/02/2001

CAV JUDGEMENT

1. This is an appeal under Section 96 of the Code of Civil Procedure, 1908, against the judgement and decree dated 13th April, 1979, recorded by the learned Joint

Civil Judge (SD), Nadiad, in Special Civil Suit No. 130/75, in which, the learned trial Judge dismissed the suit of the present appellant and directed the parties to bear their own costs in the suit.

2. The appellant abovenamed is a District Panchayat of Kheda District having its Head-quarter at Nadiad. It had entered into some contract for supply of certain materials with the respondents. The appellant contended before the trial Court that the respondent committed breach of contract by not supplying the materials in accordance with the contract between the parties and therefore, the appellant was required to purchase those materials from the open market, which was purchased by the appellant after following due process and procedure for the purchase of articles from open market and therefore, the appellant was put to loss. But considering the amount of price of the goods payable to the respondent and the amount of price actually paid to the suppliers of goods, the appellant contended before the Trial Court that, because of the loss suffered by the appellant on account of the breach of the contract committed by the respondents, the appellant was entitled to recover the said amount from the respondent. Therefore, the suit was filed by the appellant against the respondent for the recovery of the said amount being the difference of the said two amounts.

3. The respondents filed written statement before the Trial Court and contested the suit on several grounds. It was contended before the trial Court by the respondent that the appellant had no right to file the suit. That the appellant had taken the writing in question under misrepresentation and coercion. That there was no concluded contract between the parties and therefore, the respondent was not required to supply any goods to the appellant. That no breach of contract was committed by the respondent. That appellant had not proved the damages suffered by the appellant. That any way, the appellant was not entitled to any reliefs and therefore, the suit of the appellant be dismissed with costs.

4. The Trial Court framed the necessary issues at Ex. 17. After recording the evidence and hearing the arguments, the learned Trial Judge arrived at the decision that respondent have committed breach of contract by not supplying the goods as contended, that the time was of the essence of the contract. That the appellant had a right to file a suit. That the contract for supply of goods detailed in the plaint para 2 between

the parties had been proved by the appellant. That the appellant's tender was legal and valid. That respondent had failed to prove that writing dated 31st March, 1975 was obtained by appellant under misrepresentation and coercion. That the appellant had purchased the goods and paid Rs. 1,02,150/- to another supplier.

5. So, all the issues have almost been decided in favour of the appellant.

6. However, the trial Court found that there was some sort of negligence on the part of the officers of the appellant. That the officers of the appellant Panchayat had some sort of unfair dealings with the second supplier and the appellant did not suffer legal injury. The trial Court also found that there was no proof as to the injury suffered by the appellant on the date of the contract.

7. On the aforesaid findings, the trial Court has dismissed the suit of the appellant as aforesaid.

8. Feeling aggrieved by the said judgement and decree of the trial Court, the appellant has preferred this appeal before this Court.

9. It has been mainly contended here that all the issues have been answered in favour of the appellant. There was no reason for the trial Court to dismiss the suit of the appellant.

10. It has further been contended that the trial Court has arrived at a finding about the negligence and unfair practice on the part of the officers of the appellant without any issue and without any defence.

11. That the trial Court has erred in holding that the market price of the materials in question prevailing in the market during the relevant time was not more than the contracted price and therefore, the appellant was not entitled to receive any compensation by way of damage from the respondent. That the trial Court has committed error in holding that the appellant has not suffered any legal injury. That on the whole, the judgement and decree of the trial Court are illegal and erroneous and deserve to be set aside.

12. It is, therefore, prayed that the present appeal be allowed, the judgement and decree passed by the trial Court be set aside and the suit of the appellant be decreed in terms of the reliefs prayed in the plaint.

13. Appeal was admitted and notice was issued. Appearance was made on behalf of the respondent. I have heard the learned advocates for the parties and have perused the papers.

14 In fact, the learned advocates for the parties have taken me through the judgement of the trial Court and have also pointed out the relevant material from the evidence produced on record, both oral and documentary.

15. Now, one thing is certain that the trial Court has recorded a finding that there was a concluded contract between the parties for supply of stationary articles mentioned in the contract. Trial Court has found that the respondents were required to supply the material but they did not supply the same despite the written intimation given to them from time to time. The trial court has therefore, recorded a finding that the respondents had committed breach of contract and therefore, they were liable to compensate the appellant by way of compensation for the damages suffered by the appellant.

16. Thereafter, the trial Court has recorded findings on the issue of damage and compensation suffered by the appellant in favour of the appellant. There the trial Court has recorded a finding that there was some sort of negligence and unfair practice on the part of the appellant's officer and the appellant has not suffered legal injury. It is further observed by the trial Court that there was some sort of connivance on the part of the appellant's officer and therefore, the appellant was not entitled to any decree against the respondents.

17. It would be relevant to consider here that while dealing with the aforesaid aspect of the case, the trial court has made certain observations in para 22 at page 41 of the judgement. The same may be reproduced for ready reference herebelow :-

> " This clearly shows that either due to negligence on the part of the officers of the plaintiff - panchayat or due to some conspiracy between suppliers and the officers of the plaintiff - panchayat, the plaintiff - panchayat had to pay 100% more price than the price prevailing in the market. If we compare the prices of the papers taken by witnesses of the defendants and those of the plaintiff during the months of April, May, June, July and August, we

> can find that if the plaintiff - panchayat had purchased papers at the rates prevailing in the market it would have gained instead of losing, all these period were less then the prices quoted by the defendant No. 1 firm. As we have already held earlier, the plaintiff panchayat can get the difference of the price prevailing on 10.5.74 i.e. date of the purchase of the contract on that date as we have found from the evidence of the witness of the defendant and those of the plaintiff, the prices of the papers which were to be supplied by the defendant no. 1 firm were less than the prices quoted by the defendant no. 1 firm in the tender form. Not only that, even on 30.7.1974 and on 2.8.1974, the market price of the papers was not more than the price quoted by the defendant no. 1 firm in the tender form ex. 30. "

18. This shows that the trial Court has made specific observation that either there was negligence on the part of the officer of the appellant - panchayat or there was some sort of conspiracy between the second supplier and the officers of the appellant - panchayat and therefore, the appellant - panchayat was required to pay 100% more price than the price prevailing in the market.

19. Now, there appears to be no defence in the written statement about the negligence or conspiracy. This would be an out-come of the fact and not a simple matter of law. For basing the finding on this aspect, there must be some sort of pleading, issues and evidence. It seems that there was no pleading and there was no issue in respect of the negligence or conspiracy. The suit has been substantially dismissed from this angle. I am of the view that in absence of any specific pleading and issue, the parties may not have concentrated on the issue from that angle.

20. Learned advocate for the appellant has argued at length that in absence of any issue, findings have been recorded by the trial Court and therefore, the matter should be remanded back to the trial Court for recording fresh finding on the basis of the evidence which has been and which may be hereafter produced by the parties.

21. Now, it is very clear that suit has been dismissed substantially on the couple of grounds. The first is that the trial court has attributed either negligence or conspiracy on the part of the officers of

the appellant - panchayat. The second is that according to the trail Court the appellant has purchased the said goods, since the same was not supplied by the respondent to the appellant but he failed to frame legal injury. Question of negligence and question of conspiracy is a matter of evidence, which can be decided only when there was some issue on which, the appellant could lead evidence. As said above, there was no issue and there is no serious dispute between the parties about absence of issue. Therefore, the appellant does not appear to have produced any evidence before the trial Court to meet with the said oral contention of the respondents. Even there appears to be no specific defence made by the respondents in the written statement on the issue of negligence and conspiracy. Moreover, the issue of conspiracy would also attribute some sort of misconduct on the part of the officers of the District panchayat. If ultimately, the Civil Court decides that there was negligence or conspiracy on the part of the officers of the appellant panchayat, then, it would necessarily and naturally reflect on the conduct of those officers. This remark may prejudicially affect the aforesaid appellant's officers. Therefore, I am of the view that this sort of remark has to be based only on appropriate evidence and issue followed by evidence thereon.

22. It appears that there was no issue and there was no pleading on the aforesaid point. Therefore, when findings have been based on no issues, it would be a case, wherein, the issues can be referred to the trial Court for fresh decision by this Court.

23. It is further contended that there was no evidence before the trail Court that the appellant suffered injury in terms of the claim made in the plaint. It is also contended that there is no evidence to show as to what were the prices of the goods in question prevailing in the market on the date of the breach of the contract.

24. Here, it is required to be considered that suppose the appellant had entered into contract with the respondents and the respondents were required to supply the materials within a prescribed period, the first tender was in the month of March, 1974, the second tender was of 21st July, 1974, the order was placed by the appellant for supply of goods on 5-4-1974 and as per the terms and conditions of the contract, the respondents were required to supply the materials within 35 days thereof. The respondents have contended that the trial Court has recorded a finding that there was no material

to show prevailing market value of the said goods on the date on which the goods were required to be supplied, according to contract between the parties.

25. Now, it is very clear that as soon as there is a breach of contract on account of non supply of goods on a particular due date, the appellant may not be expected to purchase the goods on that particular date or on the next date. Here it is a matter on record that the appellant issued notices to the respondent and required the respondents to supply the goods. This is an attitude and conduct of the officers of the appellant, which is required consideration by the trial Court.

26. Even despite service of notices, the respondent did not supply the goods and did not answer the notices of the appellant. According to the appellant, the appellant is a District panchayat and there are few norms for such statutory body, which require an appropriate procedure to be followed for purchase of goods from the open market.

27. Even while entering into contract for purchase of stationary articles with the respondent, the appellant had invited tenders and the respondent had filled in the tenders.

28. Same way, when the respondents allegedly committed breach of contract, the appellant according to it's case, invited fresh tenders in July, 1974 and on receiving tender, fresh orders were issued and goods were purchased by the appellant from the new supplier.

29. There was some passage of time between the actual date of breach of contract and the date of purchase of goods from the second supplier. Such a passage of time requires consideration.

30. Any way, the suit has been mainly dismissed on the ground that there was no proof about the price of the goods in question prevailing on the date of breach of contract.

31. At the same time, there was no issue about the negligence and conspiracy and the suit has been mainly and substantially dismissed from that angle, that there was some sort of negligence and conspiracy on the part of the officers of the appellant.

32. In that view of the matter, I am of the view that the trial Court should have framed the following issues:-

(i) Whether the defendants prove that there was conspiracy between the officer of the plaintiff and the second supplier of goods ?

(ii) Whether the defendants prove that there was negligence on the part of the officers of the plaintiff panchayat in not promptly purchasing the goods from the open market on alleged breach of contract of the defendant ?

(iii) Whether the plaintiff has suffered legal injury ? If yes, of what Court ?

33. Learned advocate for appellant has therefore, submitted that the matter may be remanded to the trial Court for framing the aforesaid issues and for disposing of the matter afresh after dealing with the aforesaid issues and after providing reasonable opportunity to the parties to lead evidence on the said issues.

34. On the other hand, learned advocate for respondent has strongly objected against the remand of the matter.

35. I find that the Civil Suit was filed in the year 1975. Appeal was filed in 1980. In that view of the matter, this would not be a fit case for remanding the matter out right for fresh decision. At the same time the facts remain that aforesaid decision has been arrived at without any issue and the appellant should not be deprived of its legitimate right of opportunity to lead evidence on those issues. Therefore, opportunity is required to be provided to the parties to lead evidence on the aforesaid issues. This can be done without remanding the suit back to the trial Court but by keeping appeal pending and by directing the trial Court to provide opportunity to the parties to lead evidence on the aforesaid issues and send findings of the Court on these issues to this Court within a span of three months.

36. In view of the aforesaid facts and circumstances of the case, it is directed as under :-

(i) the present First Appeal shall remain on file of the court.

(ii) The trial Court is directed to frame and decide the aforesaid additional issues.

(iii) The trail Court shall provide reasonable opportunity to the parties to lead evidence on the aforesaid issues.

(iv) The trial Court is further directed to record its findings on the aforesaid issues and to certify the said findings to this Court within three months from the date of receipt of this order by it.

(v) office shall promptly communicate to the trial Court the aforesaid order and shall forthwith return R & P of Special Civil Suit No. 130/75 to the trial Court.

(vi) while sending and certifying the findings on the aforesaid issues, the trial Court shall forward the R & P of Civil Suit No. 130/75 to this Court.

(vii) On receiving the R & P alongwith findings of the trial Court, the office shall without any delay place this appeal for final hearing.

(D.P. Buch, J.)

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